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ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
LAND USE REGULATION PROGRAM

Coastal Permit Program Rules
Freshwater Wetlands Protection Act Rules

Proposed Amendments:	N.J.A.C. 7:7-2.3, 10.2, 10.3, 10.4, 10.6; N.J.A.C. 7:7A-11.1
Authorized By:	Bradley M. Campbell, Commissioner, Department of Environmental Protection
Authority:	N.J.S.A. 12:5-3, 13:1D-9, 13:1D-29 et seq., 13:9A-1 et seq., 13:19-1 et seq. and N.J.S.A. 13:9B-1 et seq.
Calendar Reference:	See Summary below for explanation of exception to calendar requirement
DEP Docket Number:	
Proposal Number:	
A Public hearing concerning the proposal will be held:	

Submit written comments by (60 days after proposal) to:

Janis E. Hoagland
Attn: DEP Docket Number:
Office of Legal Affairs
New Jersey Department of Environmental Protection
P.O. Box 402
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on 3½ inch diskettes as well as on paper. The Department will be able to upload the comments onto its office automation equipment and will avoid having to retype the

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comments. The Department will use the paper version of the comments to ensure that the uploading was accomplished successfully. Submittal of comments on diskette is not a requirement. The Department prefers Microsoft Word 6.0 or above; however, other word processing software that can also be read or used by Microsoft Word 6.0 is acceptable. MacIntosh formats should not be used.

The proposal can be viewed or downloaded on the Land Use Regulation Program website at <http://www.state.nj.us/dep/landuse>. A copy of the proposal is available by e-mailing the Department at lurweb@dep.state.nj.us, or by calling the Department at (609) 984-3444. The agency proposal follows:

Summary

The Department of Environmental Protection is proposing amendments to the fee provisions of the Coastal Permit Program Rules (N.J.A.C. 7:7) and the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). As the Department has provided a 60 day comment period on this notice of proposal, this proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The proposed amendments to the Coastal Permit Program Rules at N.J.A.C. 7:7-10 relate to the application fees for waterfront development permits (N.J.A.C. 7:7-10.2), Wetlands Act of 1970 (coastal wetlands) permits (N.J.A.C. 7:7-10.3), and Coastal Area Facility Review Act (CAFRA) permits (N.J.A.C. 7:7-10.4). The proposed amendments to the Freshwater Wetland Protection Act Rules at N.J.A.C. 7:7A-11 relate to the application fees for letters of interpretation (LOIs), general permit authorizations (GPs), transition area waivers (TAWs), individual permits (IPs), and the combination of these fees with one another and with fees pursuant to the Flood

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Hazard Area Control Act rules (N.J.A.C. 7:13). In addition, a new fee is proposed for Individual Water Quality Certificates as defined at N.J.A.C. 7:7A-1.4.

A State-run program may derive its funding from legislative appropriations, by directly charging those seeking a service through permit fees, or through a combination of both. The fees collected for land use permits such as those that are the subject of these amendments, affect those who develop property and those purchasing property because property with permit and development approvals is more costly than property sold contingent upon receiving such approvals, while funding through legislative appropriation is borne by all taxpayers. At this time, the permit fees collected by the Department amount to only 50% of the cost to operate the coastal, freshwater wetlands and flood hazard regulatory programs. In an effort to close this gap and avoid the need to increase dependence on legislative appropriations to fund these programs, the Department is herein proposing to increase the coastal and wetlands program fees. The Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) specifically provides for the collection of fees for the review and processing of LOI requests (see N.J.S.A. 13:9B-8h), permit applications (see N.J.S.A. 13:9B-9a), and transition area waivers (see N.J.S.A. 13:9B-17b). The assessment of fees, under the Coastal Permit Program Rules is governed by the 90-day construction permits law (N.J.S.A. 13:1D-29 et seq.) which states: "The commissioner shall in accordance with a fee schedule adopted as a rule or regulation establish and charge reasonable fees for the filing and review of any application for a construction permit." (See N.J.S.A. 13:1D-33.) The fees in the Flood Hazard Area Control Act rules, N.J.A.C. 7:13, will be addressed under a separate, future proposal.

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N.J.A.C. 7:7 COASTAL PERMIT PROGRAM RULES

Proposed amendments to the application fees at N.J.A.C. 7:7-10.2 (waterfront development permits), N.J.A.C. 7:7-10.3 (coastal wetland permits), and N.J.A.C. 7:7-10.4 (Coastal Area Facility Review Act (CAFRA) permits) would result in the doubling of all application fees in the Coastal Permit Program Rules. A review of the past 20 years of permit fees for the Coastal Permit Program shows that, in 1981, waterfront development fees were established as 1% of construction costs or a minimum of \$100. CAFRA permit fees were \$1,000 plus \$10 per acre for residential development or \$1,500 plus \$10 per acre for mixed development (residential plus commercial). In 1985, the fee for a coastal wetlands Type A permit was one-half of 1% of construction costs or a minimum of \$100, while the fee for a coastal wetlands Type B permit was one-half of 1% of construction costs or a minimum of \$300.

In 1990, the Department began regulating additional areas under the Waterfront Development Law, now commonly referred to as the "upland waterfront development area." Permit fees were established at \$250 for four residential dwelling units plus \$50 for each additional unit and \$500 plus one-half of 1% of construction costs up to \$1,500 for non-residential development. In 1992, these fees were increased and the Department established a \$250 permit fee for waterfront development general permits. At that time, CAFRA fees were established for residential development at \$3,000, plus: \$50 for up to 300 units, \$40 for 301 to 600 units and \$30 for more than 600 units. Non-residential development application fees were \$3,500, plus \$500 per acre included in the site plan. CAFRA and waterfront development fees have not been increased since 1992. In 1993, the Department established CAFRA general permits and the fee for them was set at \$250. In 1994, the Department adopted rules to allow the payment of fees in three installments for certain applications. Also, in 1994, the Department

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capped the application fees for Waterfront Development and CAFRA permits at \$30,000, except where additional fees were necessary to cover the Department's costs based on the application review time and the estimated costs of determining compliance with permit conditions. In 2000, the Department amended the fees for mining, landfill, and park activities. Most recently, in early 2002, the Legislature capped fees for all CAFRA permit applications at \$30,000 "except that a fee in excess of \$30,000 may be charged if the Department documents actual costs in excess of \$30,000 for the review and processing of an application and the estimated cost of determining compliance with the conditions of the permit." (see P.L. 2001, Chapter 314; N.J.S.A. 13:1D-33). Since CAFRA permit applications for all developments except for residential development are already capped at \$30,000, a cap in response to the Legislation was incorporated into the CAFRA fee provisions for residential development at N.J.A.C. 7:7-10.4(d) when certain amendments to the coastal fee rules were recently adopted (see 35 N.J.R. ____; Feb. 3, 2003). For the purposes of clarity, the Department is proposing to consolidate N.J.A.C. 7:7-10.2(b)3i and 10.2(c)2i which cap the waterfront development application fees at \$30,000 as new N.J.A.C. 7:7-10.2(d).

The Department is proposing to amend N.J.A.C. 7:7-10.2, Application fees for Waterfront Development permits, to add at subsection (e) a fee for the request for a written determination of exemption from the permitting requirements. The proposed fee is \$250.00.

The Department is also proposing to amend N.J.A.C. 7:7-2.3(f) to clearly identify the information needed to be provided with the request for a written determination of exemption. Accordingly, proposed new N.J.A.C. 7:7-2.3(f)1 sets forth the information to be submitted in support of a request for exemption for the reconstruction or expansion of a single family home or

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existing structure more than 100 feet landward of the mean high water line. Proposed new N.J.A.C. 7:7-2.3(f)2 sets forth the information to be submitted in support of a request for exemption for minor changes to existing structures that will not adversely affect special areas. Proposed new N.J.A.C. 7:7-2.3(f)3 sets forth the information to be submitted in support of a request for exemption for the repair or replacement of certain legally existing waterfront structures. Proposed new N.J.A.C. 7:7-2.3(f)4 sets forth the information to be submitted in support of a request for exemption for the redecking of a bridge surface.

N.J.A.C. 7:7A FRESHWATER WETLANDS PROTECTION ACT RULES

The proposed amendments to the fees in the tables at N.J.A.C. 7:7A-11.1, entitled, respectively, Application fees for LOIs, Application fees for general permit authorizations, Application fees for transition area waivers, Application fees for exemption letters, Application fees for individual permits, and Application fees for modifications, would result in the doubling of all application fees in the Freshwater Wetlands Protection Act (FWPA) Rules. The Department first established fees to implement the FWPA rules in March 1988. At that time, fees were established for LOIs (presence/absence, \$100; line verification, \$250 plus \$20 per acre), general permits (\$100) and individual permits (\$1000 plus \$100 per acre). In 1989, fees were established for transition area waivers (\$250 plus \$20 per acre for a site with an LOI and \$450 plus \$25.00 per acre for a site without an LOI) and for exemptions (\$100). In 1992, the fee for a general permits was increased to the current \$250. The fee for a delineation LOI under one acre was increased from \$100 to the current \$250 and, while the base fee for an LOI was not increased from \$250, the per acre assessment for an LOI was increased from \$20 to \$35. The

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base fee for a transition area waiver remained \$450, while the per acre assessment was increased from \$25 to \$40. The fee for an individual permit has not been changed since the original fee rules were promulgated in 1988. The Department has not proposed any fee increases for the FWPA program since 1992.

A new category of application fee is being proposed for Individual Water Quality Certificates (WQC) pursuant to N.J.A.C. 7:7A-2.1(d) in the FWPA rules. In the majority of cases, WQCs are issued simultaneously with a Department freshwater wetlands permit. However, the Department does not have freshwater wetlands permitting jurisdiction in the Hackensack Meadowlands. Applicants proposing activities with wetland impacts in the Meadowlands apply to the U.S. Army Corps of Engineers (ACOE) for permits. However, under the Federal Clean Water Act at 33 U.S.C. 1341 and under the State Clean Water Act at N.J.S.A. 58:10-A-1 et seq., the Department has the authority to review all activities to be approved by the ACOE within the waters of the State of New Jersey to determine whether or not to grant a water quality certificate. The Department is proposing fees for water quality certificates equal to those for individual freshwater wetlands permit reviews. The proposed WQC fee is the same as the fee for an individual freshwater wetlands permit because the level of review required, and the need to review proposed mitigation plans is comparable. In addition there are some Federal hazardous waste clean-up activities, Federal Energy Regulatory Commission projects, and military projects such as dredging that require review for issuance of a WQC.

Overall, the fees for the coastal permit and freshwater wetlands protection programs relate to the potential impact of a particular project on the resource to be protected and the resulting amount of time required by the Department to conduct its review. Where appropriate, general permits have been established for categories of activities that result in minimal impacts

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to coastal resources and/or freshwater wetlands. Consequently, the scope of review for those applications is limited, the time period needed for review is short, and the permit fees are the lowest of all categories of permit applications. In contrast, a CAFRA permit or an individual freshwater wetlands permit have the potential for greater impacts to the resources they protect, entail a full scope of review, and require significant periods of review time. The fee schedule reflects these factors by establishing a base fee and adding a per unit or per acre fee assessment for CAFRA and individual freshwater wetlands permits, respectively.

In addition, for clarification, the Department is proposing to delete the word "affected" in the N.J.A.C. 7:7A-11.1 table entitled Application fees for LOIs, as it relates to "line verification LOI under N.J.A.C. 7:7A-3.4---site one acre or larger" and to, "LOI (any type) and a transition area waiver, (any type) if the site is larger than one acre." For a "line verification LOI under N.J.A.C. 7:7A-3.4---site one acre or larger," the Department calculates the fee as a flat rate of \$250.00 (proposed to be increased under this proposal to \$500.00) plus a per acre fee of \$35 (proposed to be increased to \$70.00) for the entire property that is the subject of the LOI. For an "LOI (any type) and a transition area waiver, (any type) if the site is larger than one acre," the fee is calculated in the same manner, since the wetlands must be delineated before considering the applicability of the requested transition area waiver. Thus the fee is calculated as a flat fee of \$450.00 (proposed to be increased to \$900.00) plus a per acre fee of \$40.00 (proposed to be increased to \$80.00) for the entire property that is the subject of the LOI. The addition of the word "affected," to these fee provisions, adopted in September 2001, did not change the fee calculation method from that used under the previous rules. However, despite the explanatory phrase that is part of footnote 1 to the fee tables, the word "affected" in this context has been

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misinterpreted by many applicants and has caused confusion regarding the per acre calculation of these fees. Therefore, the word "affected" is proposed to be deleted, together with the explanatory phrase related to its use in these two fee provisions in footnote 1.

Social Impact

The proposed amendments to increase permit fees for the coastal and freshwater wetlands permitting programs will have a positive social impact for New Jersey's taxpayers because increased fees will reduce the need for higher taxes to support the legislatively mandated activities of the Department. In addition, society as a whole benefits from the protection of the resources in the coastal zone and freshwater wetlands because of the value they provide for water quality protection, flood protection, and as habitat for fish and wildlife, including commercial and recreational species. Protected environmentally sensitive areas may also provide open space and beachfront areas for the benefit and enjoyment of the public. The amendments to increase the fees may also have a positive social impact if they discourage some applicants from pursuing construction in the coastal zone and/or freshwater wetlands and instead pursue development in non-regulated areas that have existing infrastructure to support development and fewer environmental constraints. The proposed amendments will result in a negative social impact for the building industry because the amendments will increase the permitting costs for construction in environmentally sensitive areas. The larger fees may also result in higher costs for housing if the building industry passes the costs of the increased fees on to the individuals or businesses purchasing new homes or commercial buildings.

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The elimination of the word "affected" from the description of the fee calculation for LOI line verification, and for LOI (any type) and a transition area waiver (any type) if the site is larger than one acre, in the table at N.J.A.C. 7:7A-11.1 should have a small positive social impact in that it will eliminate potential confusion and uncertainty for applicants calculating their fees.

Economic Impact

The proposed amendments to increase fees for coastal and freshwater wetlands permits will have a positive economic impact on New Jersey's taxpayers because increased fees will reduce the need for higher taxes to support the legislatively mandated activities of the Department. To the extent that the proposed fee increases might discourage development in the coastal zone and/or freshwater wetlands, the amendments could have a positive economic impact in avoiding the costs that can be incurred for the maintenance or repair of buildings in areas that may be vulnerable to damage and flooding from coastal storms and high water, or to damage from settling, as well as mold, mildew and other moisture problems.

The proposed amendments will have a negative economic impact for the building industry because they will increase costs for construction in the coastal zone and freshwater wetlands, State open waters and transition areas. However, the Department believes that, despite the increases, the permit fees still constitute a relatively small expense compared to the overall costs of developing in environmentally sensitive areas. In 2001, the Department issued 1028 waterfront development permits, 55 coastal wetlands permits, 541 CAFRA permits, 1,193 general and 33 individual permits for activities in freshwater wetlands and State open waters, 674 transition area waivers, and 1,671 freshwater wetlands letters of interpretation. In general,

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the number of permit actions has been increasing each year. Each approval, separately or in combination, represents a development project of some type. Given these permit numbers, it seems safe to assume that, despite the permit fees, there is a substantial economic benefit accrued by the applicant or developer to pursue their proposed developments despite environmental constraints.

The proposed amendments will also increase the costs for letters of interpretation and also add a fee for determinations of exemption under the waterfront development program and for water quality certificates. The fee for a letter of interpretation represents an economic investment since it may enable a prospective developer to complete construction of a project without impacts to wetlands, thus avoiding the additional costs associated with permits or waivers.

The amendment of the procedure in the rules for obtaining a written determination of exemption from the waterfront development permitting requirements should save applicants time and possibly money since it more specifically details the information needed to make an exemption determination thus making it easier for applicants to apply successfully. The additional information, required to be submitted as part of the proposal, should be readily available to an applicant preparing an application for a local development approval with the exception of the limits of all Special Areas and the portion of the Tidelands Maps. However, this information can be obtained from the Department. Therefore, with the exception of the \$250 fee, which may result in a minor negative economic impact, the economic impact resulting from the proposed amendments to the rule is negligible. Further, the issuance of a written determination regarding the exemption status of a project enables an applicant to demonstrate to other agencies that no coastal permits are required for a proposed project. Often, the township planning board

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or construction official will request documentation demonstrating that an applicant for a subdivision, site plan approval or building permit has obtained all necessary State approvals for construction in the coastal zone. Therefore, in order to provide this service, the Department has dedicated staff time to reviewing these requests.

The proposed fee increases may result in increased costs for housing if the building industry passes the cost of the fees on to the individuals or businesses purchasing new homes or office buildings.

The deletion of the word "affected" in the fee table will have a neutral economic impact since the method to calculate these fees will not change.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995 c. 65) require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards analysis.

New Jersey's Freshwater Wetlands Protection Act program replaces the Federal Clean Water Act Section 404 program(33 U.S.C. 1344) throughout most of the State. Consequently, the State's implementing rules replace the Army Corps of Engineers (ACOE) regulations for implementation of the Section 404 program. The basic structure of the Department's freshwater wetlands permitting program, and much of its substance, are essentially the same as the Federal 404 program. Both provide for individual and general permits. Both use similar key concepts and definitions, and apply similar standards in approving both general and individual permits. However, while the New Jersey Legislature used the Federal 404 program as the basis for the

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FWPA, it also tailored the FWPA to meet the needs of New Jersey and to more strictly limit activities in and around wetlands in order to avoid excessive wetlands losses in New Jersey. As a result, the New Jersey program regulates more types of activities in freshwater wetlands than the Federal 404 program does, regulates an upland "transition area" around each wetland, and requires a more involved process to obtain approval from the Department for regulated activities. The Department established its regulatory program as a fee program, assessing fees for each type of review activity including letters of interpretation, general and individual permits and transition area waivers. The Federal government operates the ACOE program using an annual appropriation instead of assessing permit fees sufficient to support its operations. Consequently, the ACOE charges nominal fees for a minor subset of its review activities with the actual operating costs supported by Federal taxes. There are no fees for Nationwide permit authorizations, for jurisdictional determinations, or for transition area waivers (since transition areas are not regulated features pursuant to the Federal program). The ACOE charges individual homeowners \$10 for the review of an individual permit application. For commercial entities, the individual permit review fee is \$100.

The State of New Jersey is required to balance its budget each year, while there is no obligation for an annually balanced Federal budget. Consequently, the State assesses fees to assist in paying for its programs. The State has opted to charge fees to those who will receive the major benefit from developing environmentally sensitive lands, while the Federal government has determined to spread the cost of its environmental programs among all taxpayers. Therefore, the Department has concluded that the freshwater wetland permit fee amendments do not exceed any Federal Standards or requirements.

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The Federal Coastal Zone Management Act (P.L. 92-583) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for development in the coastal zone; rather, it provides broad guidelines for states developing coastal management programs. The State's Coastal Management Program, meets the guidelines established under the Federal Coastal Zone Management Program, and the State of New Jersey has obtained approval from the National Oceanic and Atmospheric Administration to implement its program under the Federal Coastal Zone Management Act. These guidelines are found at 15 C.F.R. Part 923. They include the basic components that must be included in a state's coastal zone management plan but do not set forth procedures by which individual activities within a State's coastal zone are to be regulated. Since there are no established Federal standards for permitting or the establishment of permit fees, there is no basis for comparison. Therefore, the Department has concluded that the coastal permit fee amendments do not exceed any Federal Standards or requirements.

Environmental Impact

The proposed amendments will have a positive environmental impact by providing revenues to support the Department's regulatory programs for the protection of the State's important coastal and freshwater wetland resources. At N.J.S.A. 13:19-2, the legislature found and declared that "New Jersey's bays, harbors, sounds, wetlands, inlets, the tidal portions of fresh, saline or partially saline streams and tributaries and their adjoining upland fastland drainage area nets, channels, estuaries, barrier beaches, near shore waters and intertidal areas together constitute an exceptional, unique, irreplaceable and delicately balanced physical, chemical and biologically acting and interacting natural environmental resource called the coastal area.... It is further declared that the coastal area and the State will suffer continuing and ever-accelerating

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serious adverse economic, social and aesthetic effects unless the State assists, in accordance with the provisions of this act, in the assessment of impacts, stemming from the future location and kinds of developments within the coastal area, on the delicately balanced environment of that area." In 1987, the legislature found and declared that it is important to protect freshwater wetlands because they "preserve drinking water supplies by purifying surface water and groundwater resources;" "provide a natural means of flood and storm damage protection;" retard soil erosion, "provide essential breeding, spawning, nesting, and wintering habitats for a major portion of the State's fish and wildlife including migrating birds, endangered species, and commercially and recreationally important wildlife;" and "maintain a critical baseflow to surface waters through the gradual release of stored flood waters and groundwater particularly during drought periods." (See N.J.S.A. 13:9B-2). As stated previously, the Legislature also provided the Department with the authority to charge fees to support these goals.

Jobs Impact

The proposed amendments are not expected to have any job impacts since, with the exceptions of the fees for a written determination of exemption from the waterfront development permitting requirements and for water quality certificates, the amendments will increase already existing fees for development of environmentally sensitive properties. There are no changes in procedural requirements and no greater permitting restrictions or requirements that would result in the loss or gain of jobs relating to the construction or environmental consulting industries. It is possible that the smaller development companies may find the proposed fees cost prohibitive and seek employment outside the State of New Jersey.

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Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4, the Department evaluated this rulemaking to determine the nature and extent of the impacts of the proposed amendments on the agriculture industry.

In general, agricultural activities such as farming and silviculture do not require a coastal permit (CAFRA, Waterfront Development or Wetlands Act of 1970), unless there is a residential or commercial development component associated with the agricultural use, and these components exceed the jurisdictional thresholds established in the coastal statutes. However, many aquaculture activities require a coastal permit because they are located within or in close proximity to tidal waters. Because of the location of aquaculture activities, the potential for serious impacts to coastal resources is great and the review of the proposed activity or development associated with the aquaculture operation is typically complex. Therefore, the Department believes that it is necessary to review applications for proposed aquaculture projects in order to provide adequate protection for marine and estuarine resources, as well as to protect coastal waters for other uses. In the past 6 years, the Department has received 3 coastal permit applications for aquacultural activities. Given the minimal amount of coastal permit applications received for aquacultural activities, the Department does not believe that the proposed amendments will have a significant impact on the aquaculture industry.

Since ongoing farming, ranching and silviculture are exempt from the Freshwater Wetlands Protection Act rules, and few new farms are being established in New Jersey, the proposed amendments are not likely to have any effect upon the agriculture industry.

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Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that some of those builders and property owners that may be affected by the proposed amendments are "small businesses" as defined by the Regulatory Flexibility Act. The FWPA rules apply to any person owning property containing freshwater wetlands, State open waters and/or transition areas, who intends to engage in a regulated activity. The Coastal Permit Program Rules apply to anyone proposing regulated activities within the geographic scope of the New Jersey coastal zone. It is impossible for the Department to estimate the exact number of small businesses that own property that will be affected by the proposed amendments.

The proposed amendments will not impose additional reporting or recordkeeping requirements on small businesses. However, the proposed fees are based upon the type of permits being sought, which in turn are based on environmental impacts. Therefore, the proposed fee increases will generally have the same impact on a small business as on any other person. Because the values and functions of freshwater wetlands and the myriad environmental resources in the coastal zone are important to all of the State's citizens, and these proposed amendments are necessary to provide the revenues to maintain appropriate review and protection of these resources, no lesser requirements for small businesses are provided.

Smart Growth Impact

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The Coastal Permit Program Rules and Freshwater Wetlands Protection Act Rules overall are consistent with the law and policy of New Jersey to promote smart growth and to reduce the negative effects of sprawl and disinvestments in older communities, as described in Executive Order No. 4 (2002). Both sets of rules discourage incompatible development of environmentally sensitive features, which are vital to the health and well-being of the present and future citizens of the State. The proposed permit application fee increases are consistent with smart growth policy since the fees are necessary to support the regulatory programs that ensure that development in environmentally sensitive areas, which is likely to have a greater environmental impact and related economic costs than development outside these areas, is closely scrutinized and, as appropriate, discouraged. Therefore, the proposed amendments comport with the goals of smart growth and implementation of the State Plan described in Executive Order No.4. Full text of the proposed new rules and amendments follows (additions indicated in boldface thus;) deletions indicated in brackets [thus]:

CHAPTER 7 COASTAL PERMIT PROGRAM RULES

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.3 Waterfront Development

(a) – (e) (No change.)

(f) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed development does not require a permit under (d) above.

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[1. The requesting party shall provide the Department with two copies of a map depicting the project site in a scale of not less than 1:2,400 (one inch equals 200 feet) and depicting the mean high water line, and with a project description. When the applicability determination request is based on a proposed facility's location in accordance with (a)3 above, the map shall also depict that property line as it is depicted on the official local tax map as of September 26, 1980, and shall graphically depict the proposed project.]

1. For a written determination of exemption pursuant to (d)1 and 2 above, the following shall be submitted:

i. A completed LURP application form;

ii. A written description of the proposed development;

iii. The fee specified at N.J.A.C. 7:7-10.2; and

iv. A site plan depicting the following:

(1) The location of the proposed construction, reconstruction, alteration, conversion expansion, or enlargement; and

(2) The location of the mean high water line.

2. For a written determination of exemption pursuant to (d)3 above, the following shall be submitted:

i. A completed LURP application form;

ii. A written description of the proposed development;

iii. The fee specified at N.J.A.C. 7:7-10.2; and

iv. A site plan depicting the following:

(1) The location of the proposed construction, reconstruction, alteration, conversion expansion, or enlargement;

(2) The location of the mean high water line; and

(3) The limits of all Special Areas as defined at N.J.A.C. 7:7E-3.

3. For a written determination of exemption pursuant to (d)4 and 5 above, the following shall be submitted:

i. A completed LURP application form;

ii. A written description of the proposed development;

iii. The fee specified at N.J.A.C. 7:7-10.2;

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- iv. A copy of the Tidelands instrument (grant, lease or license);
 - v. If applicable, a copy of any previous waterfront development permit issued for the structures to be replaced, renovated or reconstructed;
 - vi. A copy of the applicable portion of the Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978) or New Jersey Coastal Wetlands Map (base map photography dated 1971, 1972) showing the location and dimensions of the structures to be replaced, renovated, or reconstructed;
 - vii. Photograph(s) of the existing structures labeled as to orientation; and
 - viii. Plans showing the location and dimensions of the structures to be replaced, renovated, or reconstructed.
4. For a written determination of exemption pursuant to (d)6 above, the following shall be submitted:
- i. A completed LURP application form;
 - ii. A written description of the proposed development;
 - iii. The fee specified at N.J.A.C. 7:7-10.2; and
 - iv. A site plan depicting the location of the existing and proposed bridge surfaced to be redecked.

(g)-(h) (No change.)

SUBCHAPTER 10. COASTAL PERMIT APPLICATION FEES

7:7-10.2 Application fees for Waterfront Development permits

- (a) The application fee for each of the following shall be [\$250.00] \$500.00:
- 1. Any development requiring a coastal general permit pursuant to N.J.A.C. 7:7-7; or
 - 2. Any development consisting solely of capital repairs or reconstruction with all work taking place above the mean high water elevation on piles or other support structures or taking place landward of the mean high water line or the identical structural replacement of piles or other supports in the same location.

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(b) The application fee for any waterfront development taking place landward of the mean high water line shall be calculated as follows:

1. The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be [\$500.00] \$1,000.00 per unit. The fee for a residential development consisting of a single duplex shall be [\$500.00] \$1,000.
2. The fee for all other residential developments shall be [\$3,000] \$6,000 plus:
 - i. [\$50.00] \$100.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;
 - ii. [\$40.00] \$80.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and
 - iii. [\$30.00] \$60.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.
3. The fee for non-residential developments shall be calculated based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	[\$1,450] <u>\$2,900</u> + ½ of one percent of construction costs
\$50,001 to \$100,000	[\$1,700] <u>\$3,400</u> + one percent of construction costs above \$50,000
\$100,001 to \$200,000	[\$2,200] <u>\$4,400</u> + 1 ¼ percent of construction costs above 100,000
\$200,001 to \$350,000	[\$3,450] <u>\$6,900</u> + 1 ½ percent of construction costs above \$200,000
Greater than \$350,000	[\$5,700] <u>\$11,400</u> + one percent of construction costs above \$350,000

[i. The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under this formula would have exceeded \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.]

4. The fee for mixed residential and non-residential development shall be the sum of the residential and non-residential development fee as calculated under (b)1 or 2 and 3 above.

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(c) The application fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

1. The fee for residential site improvements for a single private residential unit or duplex, including, but not limited to: shore structures (bulkheads, revetments and gabions) piers and docks, walkways and activities associated with a single private residential unit or duplex, shall be [\$250.00] \$500.00 plus one half of one percent of the construction cost above \$10,000.
2. The fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	[\$1,450] <u>\$2,900</u> + ½ of one percent of construction costs
\$50,001 to \$100,000	[\$1,700] <u>\$3,400</u> + one percent of construction costs above \$50,000
\$100,001 to \$200,000	[2,200] <u>\$4,400</u> + 1 ¼ percent of construction costs above 100,000
\$200,001 to \$350,000	[\$3,450] <u>\$6,900</u> + 1 ½ percent of construction costs above \$200,000
Greater than \$350,000	[\$5,700] <u>\$11,400</u> + one percent of construction costs above \$350,000

[i. The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under this formula would have exceeded \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.]

(d) The fee payable at the time of application shall not exceed \$30,000. If the fee calculated under (b) or (c) above exceeds \$30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed \$30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

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(e) The fee for the review and processing of a request for a written determination of exemption from the Waterfront Development Law permitting requirements pursuant to N.J.A.C. 7:7-2.3(f) is \$250.00.

7:7-10.3 Application fees for Coastal Wetland permits

(a) The application fee for a Wetlands Act of 1970 permit (“Coastal Wetlands permit”) shall be one percent of the construction costs, or a minimum of [\$250.00] \$500.00 for residential dock construction associated with a single family or duplex dwelling unit, and a minimum of \$500.00 for all other regulated developments.

(b) The application fee for review of a coastal general permit application pursuant to N.J.A.C. 7:7 shall be [\$250.00] \$500.00.

7:7-10.4 Application fees for CAFRA permits

(a) The application fee for residential developments requiring a CAFRA permit shall be calculated as follows:

1. The fee for a residential development consisting of one or two dwelling units, as defined at N.J.A.C. 7:7-1.3, shall be [\$500.00] \$1,000.00 per unit. The fee for a residential development consisting of a single duplex shall be [\$500.00] \$1,000.00.

2. The fee for all other residential developments shall be [\$3,000] \$6,000 plus:

- i. [\$50.00] \$100.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;
- ii. [\$40.00] \$80.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and
- iii. [\$30.00] \$60.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(b) The fee for non-residential developments requiring a CAFRA permit shall be calculated as follows:

1. The fee for commercial, public or industrial development located on a beach or dune or

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located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, shall be calculated based on the following schedule:

Construction Cost	Fees
\$0 to \$50,000	[\$1,450] <u>\$2,900</u> + ½ of one percent of construction costs
\$50,001 to \$100,000	[\$1,700] <u>\$3,400</u> + one percent of construction costs above \$50,000
\$100,001 to \$200,000	[\$2,200] <u>\$4,400</u> + 1 ¼ percent of construction costs above \$100,000
\$200,001 to \$350,000	[\$3,450] <u>\$6,900</u> + 1 ½ percent of construction costs above \$200,000
Greater than \$350,000	[\$5,700] <u>\$11,400</u> + one percent of construction costs above \$350,000

2. The fee for commercial, public or industrial developments located beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, shall be [\$3,500] \$7,000 plus [\$500.00] \$1,000 per acre included in the site plan, except as provided at (b)2i-iv below.

i. For a proposed linear development, the fee shall be [\$3,500] \$7,000 plus [\$500.00] \$1,000.00 per acre to be disturbed. For the purposes of this section, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, which have the basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

ii. For a proposed mining operation, as defined at N.J.A.C. 7:7E-7.8, the fee shall be [\$3,500] \$7,000 plus [\$100.00] \$200.00 per acre disturbed.

iii. For a proposed development associated with a solid waste landfill the fee shall be [\$3,500] \$7,000.

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iv. For a proposed public development to be located entirely within a publicly owned park or recreation area, the fee shall be [\$3,500] \$7,000 plus [\$100.00] \$200.00 per acre disturbed.

3. – 5. (No change.)

(c) – (d) (No change.)

(e) The application fee for the review of a coastal general permit application pursuant to N.J.A.C. 7:7-7 shall be [\$250.00] \$500.00.

(f) The application fee for the review and processing of a request for an exemption letter certifying that a development is exempt from the requirements of CAFRA shall be [\$125.00] \$250.00.

7:7-10.6 Application fees for requests for modifications of coastal permits

(a) The fees for requests to modify coastal permits in accordance with N.J.A.C. 7:7-4.10 and 7.3(a) are as follows:

1. The fee for a minor modification to a Waterfront Development, Coastal Wetlands, or CAFRA permit is [\$100.00] \$200.00;
2. The fee for a major modification to an Upland Waterfront Development or CAFRA permit is 20 percent of the total original permit application fee, with a minimum fee of [\$250.00] \$500.00 and a maximum fee of [\$5,000.00] \$10,000.00; and
3. The fee for a modification of a coastal general permit is [\$100.00] \$200.00.

CHAPTER 7A FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 11 FEES

7:7A-11.1 General fee provisions

(a) – (g) (No change.)

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FEE TABLES

Application fees for LOIs (N.J.A.C. 7:7A-3):

Type of LOI	Fee
Presence/absence LOI -- whole site	[\$100.00] <u>\$200.00</u>
Presence/absence LOI under N.J.A.C. 7:7A-3.2 -- portion of a site or footprint of disturbance	[\$200.00] <u>\$400.00</u>
Line delineation LOI under N.J.A.C. 7:7A-3.3 – site smaller than one acre	[\$250.00] <u>\$500.00</u>
Line verification LOI under N.J.A.C. 7:7A-3.4 – site smaller than one acre	[\$250.00] <u>\$500.00</u>
Line verification LOI under N.J.A.C. 7:7A-3.4 – site one acre or larger	[\$250.00 plus \$35.00 per acre affected], <u>\$500.00 plus \$70.00 per acre¹</u> , up to \$50,000.00
LOI extension under N.J.A.C. 7:7A-3.6	[\$100.00] <u>\$200.00</u> , or 25% of original fee, whichever is greater
LOI (any type) and a transition area waiver, (any type) if the site is one acre or smaller.	[\$350.00] <u>\$700.00</u> Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
LOI (any type) and a transition area waiver, (any type) if the site is larger than one acre.	[\$450.00 plus \$40.00 per acre affected ²] <u>\$900.00 plus \$80.00 per acre¹</u> Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
LOI (any type) and a general permit authorization	Sum of applicable LOI and general permit authorization fees
LOI (any type) and an individual permit	Applicable individual permit fee

¹. When these fee tables refer to a cost "per acre," this means the cost is per acre or fraction thereof. For example, an area of one and one third acres would have the same fee as an area of two acres. When these fee tables refer to a cost "per 1/10 acre," this means the cost is per tenth of an acre or fraction thereof, such that an area of 0.12 acres would have the same fee as an area of 0.2 acres. When these fee tables refer to an "acre affected," this means an acre of freshwater wetlands, State open waters, or transition area that will be affected by a regulated or prohibited activity[; or in the case of an LOI, an acre of land that will be covered by the LOI].

². See note 1 above.]

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Application fees for general permit authorizations (N.J.A.C. 7:7A-5):

Type of general permit	Fee
Any general permit authorization, except: General permit 16 (wildlife management); General permit 25 (septic repair); or General permit 17 (trail/boardwalk) on public land.	[\$250.00] <u>\$500.00</u>
Authorization under any of the following: General permit 16 (wildlife management); General permit 25 (septic repair); or General permit 17 (trail/boardwalk) on public land.	None
Multiple general permit authorizations for one site	[\$250.00] <u>\$500.00</u> plus [\$100.00] <u>\$200.00</u> for each additional general permit
General permit authorization extension	[\$100.00] <u>\$200.00</u>
Combined general permit 2 authorization and flood hazard area permit	[\$487.50] <u>\$975.00</u>
General permit 10A, 11, or 20 authorization combined with a major flood hazard area permit	[\$2,187.50] <u>\$4,375.00</u>
General permit 10A, 11 or 20 combined with a minor flood hazard area permit	[\$487.50] <u>\$975.00</u>
Combined general permit 26 authorization and flood hazard area permit	[\$250.00] <u>\$500.00</u>

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Application fees for transition area waivers (N.J.A.C. 7:7A-6):

Type of transition area waiver	Fee
Any transition area waiver, if: The entire site is covered by a valid line delineation or line verification LOI; and 2. The site is one acre or smaller.	[\$100.00] <u>\$200.00</u>
Any transition area waiver, if: The affected portion of the site is covered by a valid line delineation or line verification LOI; and 2. The site is over one acre.	[\$250.00] <u>\$500.00</u> plus [\$20.00] <u>\$40.00</u> per acre affected ^[3] ₂
Any transition area waiver, if: The site is not covered by a valid LOI, or has a presence/absence LOI only; and 2. The site is one acre or less.	[\$350.00] <u>\$700.00</u> Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
Any transition area waiver if: The site is not covered by a valid LOI, or has a presence/absence LOI only; and The site is larger than one acre.	[\$450.00] <u>\$900.00</u> plus [\$40.00] <u>\$80.00</u> per acre affected ^[4] ₃ Note: this application fee is for a combined transition area waiver and LOI, since the wetlands must be delineated before the review of the transition area waiver application.
Multiple transition area waivers (unless all are special activity transition area waivers)	Sum of all fees for all of the applicable transition area waivers
Multiple special activity transition area waivers for a single site	[\$250.00] <u>\$500.00</u> plus [\$100.00] <u>\$200.00</u> for each additional special activity waiver
Transition area waiver (any type) and an individual freshwater wetlands or open water fill permit	Either the applicable transition area waiver fee or the individual permit fee, whichever is higher
Transition area waiver (any type) and one or more general permit authorizations	The applicable transition area waiver fee, plus [\$250.00] <u>\$500.00</u> for the first general permit authorization, and [\$100.00] <u>\$200.00</u> for each additional general permit authorization
Transition area waiver extension	[\$100.00] <u>\$200.00</u>

[3] 2. See note 1 above.

[4.] 3. See note 1 above.

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Application fees for exemption letters (N.J.A.C. 7:7A-2.10):

Type of approval	Fee
Exemption letter	[\$100.00] <u>\$200.00</u>

Application fees for individual permits (N.J.A.C. 7:7A-7):

Type of approval	Fee
Individual freshwater wetlands or open water fill permit	[\$1,000.00] <u>\$2,000.00</u> plus [\$100.00] <u>\$200.00</u> per 1/10 acre affected ^[5] <u>4</u>
Individual permit extension	[\$500.00] <u>\$1,000.00</u>

^[5] 4. See note 1 above.

Application fees for modifications (N.J.A.C. 7:7A-14):

Type of approval	Fee
Minor modification	None
General permit authorization modification	[\$100.00] <u>\$200.00</u>
Major modification	25% of the application fee originally charged for the approval that is being modified, or [\$100.00] <u>\$200.00</u> , whichever is higher.

Application fee for Water Quality Certifications (N.J.A.C. 7:7A-2.1(d)):

Type of approval	Fee
<u>Water Quality Certificate</u>	<u>\$2,000.00</u> plus <u>\$200.00</u> per 1/10 acre affected
<u>Water Quality Certificate extension</u>	<u>\$1,000.00</u>

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Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purpose and expected consequences of these proposed amendments. I hereby authorize this proposal.

Date

BRADLEY M. CAMPBELL
Commissioner